

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

**PLAINTIFFS' MOTION FOR TAXATION OF COSTS OF SERVICE TO BE ASSESSED
AGAINST DEFENDANT CHARLES ROPER AND FOR ATTORNEY'S FEES**

COMES NOW Robin Mesey and Jennifer Mesey (collectively the “Plaintiffs”), by and through their attorney, pursuant to Rule 4(d)(2) of the Federal Rules of Civil Procedure and for their Motion for Taxation of Costs of Service to be Assessed Against Defendant Charles Roper (“Defendant Roper”) and for Attorney’s Fees and respectfully states to this Honorable Court the following:

1. On May 4, 2019, Plaintiffs' undersigned counsel filed the above-captioned case.
2. Also on May 4, 2019, Plaintiffs' undersigned counsel mailed to Defendant Roper the Notice of Lawsuit and Request to Waive Service of a Summons (*See Doc. #1-5*), two (2) copies of the Waiver of the Service of Summons (*See Plaintiffs' Exhibit 1 attached hereto*), a copy of the Complaint filed in this case (Doc. #1) and a self-addressed, stamped envelope¹.

3. The Waiver of the Service of Summons was due to be executed by Defendant Roper and returned to the undersigned by June 3, 2019.

¹ As noted in Doc. #1-5, these items were sent to Defendant Roper at the Van Buren Police Dept. address. However, because of the facts of the occurrence subject to this lawsuit, the undersigned anticipated that counsel who would represent the City of Van Buren and Alonzo Bradwell would not represent Defendant Roper and the undersigned mailed a separate set of the Notice of Lawsuit and Request to Waive Service of a Summons, 2 copies of the Waiver and SASE to Defendant Roper at his home address: RR 8 Box 8834, Doniphan, MO 63935.

4. The Waiver of Service was not executed by Defendant Roper or delivered to the undersigned by June 3, 2019.

5. On July 7, 2019, the undersigned filed a “Memorandum and Request for Summons” for Defendant Roper, notifying this Honorable Court in pertinent part that, “...Defendant Charles Roper has failed to return the waiver of service.” (*See Doc. #4*).

6. On July 8, 2019, an alias summons was issued to the undersigned for Defendant Roper. (*See Doc. #5*).

7. On July 16, 2019, Plaintiffs filed their Proof of Service with respect to Defendant Roper showing that Defendant Roper was personally served with the summons and Complaint on July 13, 2019. (*See Doc. #6*).

8. On April 18, 2018, Plaintiff filed his Proof of Service with respect to Defendant Eric Henry. (*See Doc. #8*).

9. The cost of service on Defendant Roper was \$65.00. (*See Plaintiffs’ Exhibit 2 attached hereto*).

10. On August 20, 2019, Counsel Portia C. Kayser entered her appearance on behalf of Defendant Roper.

11. Counsel for Defendant Roper reached out to the undersigned and the undersigned consented to Defendant Roper filing his Answer to Plaintiffs’ complaint out of time.

12. Rule 4(d)(2) of the Federal Rules of Civil Procedure provides that:

“If a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court must impose on the defendant:

(A) the expenses later incurred in making service; and
(B) the reasonable expenses, including attorney’s fees, of any motion required to collect those service expenses.”

Fed.R.Civ.P. 4(d)(2). (*emphasis added*).

13. In addition to the aforementioned service costs incurred, Plaintiffs have also incurred attorney's fees as and for achieving personal service of the Complaint on Defendant Roper, the preparation of this motion and memorandum in support filed concurrently herewith.

14. The undersigned expended 0.9 hours in: finding and discussing personal service with the private process server, preparing the memorandum and request for alias summons, preparing and filing the notice of private process server, sending the alias summons to the private process server and filing the proof of service on Defendant Roper with this Court.

15. Additionally, the undersigned has expended 1.9 hours in the preparation and filing of this instant Motion with attached exhibits.

16. Lastly, the undersigned has expended 0.6 hours in the preparation and filing of Plaintiffs' Memorandum in Support filed concurrently herewith, which includes 0.3 hours in Westlaw research.

17. Plaintiffs' undersigned counsel makes contemporaneous records on his hours worked on this case and every case.

18. Plaintiffs' undersigned counsel records his time in tenths of hours; that is, every 6 minutes is recorded as 1/10 of an hour.

19. Plaintiffs' undersigned counsel:

(a) is an attorney licensed to practice law in the State of Missouri, State of New York, this Federal District Court for the Eastern District of Missouri, the Federal District Court for the Western District of Missouri, the Federal District Court for the Southern District of Illinois, the Federal District Court for the Northern District of Indiana, the 2nd Circuit Court of Appeals, the

7th Circuit Court of Appeals, the 8th Circuit Court of Appeals and the Supreme Court of the United States; and

(b) has been practicing law for over 19 years, focusing mostly on federal civil rights and criminal defense; and

(c) has particular experience in police officer dog-shooting cases, settling a prior case for \$50,000.00. *See O'Brien, Don. "LaGrange man settles federal lawsuit against police officer who killed dog in 2010 shooting",* <https://www.whig.com/story/22143132/lagrange-man-settles-federal-lawsuit-against-police-officer-who-killed-his-dog-in-2010-shooting>.

Accessed August 24, 2019.

20. Plaintiffs' undersigned counsel's current rate on civil rights cases is \$400.00/hour and the undersigned respectfully states that this fee is reasonable.

21. Just last year, on July 27, 2018, the Honorable Chief Magistrate Judge Nanette A. Baker, in ruling on an identical motion as this motion, found the undersigned's time expended and hourly rate of \$400.00/hour reasonable. (*See Plaintiff's Exhibit 3 attached hereto*).

22. Thus, Plaintiffs seek service costs in the amount of \$65.00 and attorney's fees in the amount of \$1,360.00 as for 3.4 hours expended (0.9 + 1.9 + 0.6) at counsel's hourly rate of \$400.00/hour.

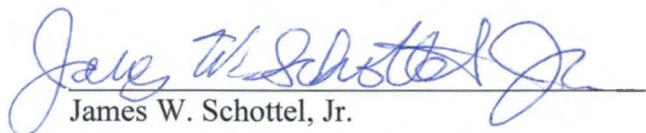
23. The undersigned states that additional attorney fees may be sought if counsel must file a reply memorandum in support of this motion.

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully request this Honorable Court to grant their Motion for Taxation of Costs of Service to be Assessed Against Defendant

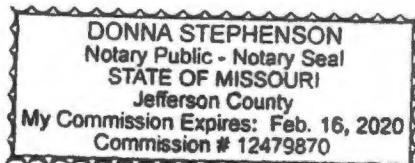
Charles Roper and for Attorney's Fees and for such other relief this Court deems just and proper under the circumstances.

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

JAMES W. SCHOTTEL, JR. being duly sworn, on his solemn oath deposes and certifies that the statements set forth in this instrument are true and correct according to his best knowledge and belief.


James W. Schottel, Jr.

Subscribed and sworn to before me this 22 day of August, 2019.



Donna Stephenson
Notary Public

(Notarial Seal or Stamp)

Respectfully submitted,

SCHOTTEL & ASSOCIATES, P.C.

BY: s/James W. Schottel, Jr.

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Attorney for Plaintiffs
Robin Mesey
Jennifer Mesey

CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2019, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

Patricia A. Keck
pat@kpwlawfirm.com

Attorney for Defendants
City of Van Buren, Missouri
Alonzo Bradwell

Portia C. Kayser
pkayser@fisherpatterson.com

Attorney for Defendant
Charles Roper

s/James W. Schottel, Jr.